

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

In re VICTORIA F., a Person Coming
Under the Juvenile Court Law.

B295092

(Los Angeles County
Super. Ct. No. 18CCJP06443A)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Appellant,

v.

BRANDY F.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of
Los Angeles County. Rashida A. Adams, Judge. Affirmed.

Darlene Azevedo Kelly, under appointment by the Court of
Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles,
Assistant County Counsel, and William D. Thetford, Deputy
County Counsel for Plaintiff and Respondent.

Brandy F. (mother) appeals from a juvenile court judgment asserting jurisdiction over her daughter, Victoria F. (born Mar. 2018). Mother argues that there is no evidence of risk to the child from mother's substance abuse or her choice of caretaker for the child, therefore there is no basis for dependency jurisdiction. Mother seeks reversal of the jurisdictional order and dispositional findings. We find that substantial evidence supports the juvenile court's jurisdictional order and dispositional findings, and affirm the judgment.

FACTUAL AND PROCEDURAL HISTORY

On March 15, 2018, mother was found on the street, seven and one-half months pregnant with Victoria. Mother was transported to the hospital and gave birth to Victoria the next day. Mother had not received prenatal care during her pregnancy. She tested positive for cocaine and marijuana at the time of Victoria's birth, and Victoria also tested positive for cocaine at birth. Mother admitted to using marijuana, cocaine, and alcohol during her pregnancy. Mother was released from the hospital on March 19, 2018, but the child remained in the hospital.¹

Mother stated that she wanted the child released to Cornelia J., who had initiated a probate guardianship proceeding on April 9, 2018. Cornelia obtained temporary legal guardianship, and when Victoria was discharged on April 23, 2018, Cornelia took the child home.²

¹ Victoria's father was never identified, as mother refused to provide father's name.

² The next court date for the legal guardianship proceeding was October 5, 2018.

Initial referral and investigation

On August 13, 2018, the Los Angeles Department of Children and Family Services (DCFS) received a referral alleging that Victoria was the victim of general neglect by her temporary guardian, Cornelia. A mandated reporter called the child abuse hotline and alleged that Cornelia had a prior history with DCFS, as well as mental health and criminal histories.³ The caller added that Cornelia had a diagnosis of psychotic disorder and was prescribed psychotropic medications, but it was unclear whether she was taking them. In addition, Cornelia had reported that no one else lived in her home other than herself and her children, but it appeared someone else also lived in the home.

A DCFS social worker arrived at Cornelia's residence on August 17, 2018, to investigate the claim. Cornelia was present and allowed the social worker inside. Cornelia identified the household residents as herself, baby Victoria, and her two adopted children, Faith and Daron. Cornelia was unable to locate the adoption papers for Faith or Daron. She stated that no one else resided in the three-bedroom, one bathroom home. Cornelia and Victoria shared one bedroom. Cornelia had a bed

³ DCFS initially concluded that Cornelia had a criminal history based on a California Law Enforcement Telecommunications System (CLETS) search which revealed several entries for Cornelia under various names and social security numbers. A live-scan later confirmed that Cornelia had no criminal history. Live-scan is an electronic fingerprinting system that quickly checks an individual's criminal history. (Health & Saf. Code, § 1522.04; *Los Angeles County Dept. of Children & Family Services v. Superior Court* (2005) 126 Cal.App.4th 144, 149, fn. 2). Cornelia has consistently denied any prior arrests or convictions.

and Victoria slept in a crib. Faith and Daron shared a second bedroom. The third bedroom was cluttered and messy, with adult men's clothing and shoes. The social worker observed two empty marijuana canisters in the third bedroom. Cornelia claimed that her two sons moved out of the home a year earlier and did not take their belongings with them. Cornelia claimed that the marijuana canisters belonged to her adult sons.

The social worker informed Cornelia that the referral included an allegation that other people were residing in the home, and that it was necessary to have a background check for all individuals residing there. Cornelia maintained that no one else lived in the home. Cornelia was unable to provide her adult sons' telephone numbers.

In 2017 Cornelia had been diagnosed with breast cancer, and had recently started chemotherapy. During the treatments, the children were cared for by Cornelia's sister, Felicia C. Cornelia did not believe that her condition or treatments interfered with her ability to care for Victoria.

Victoria appeared healthy and was up to date with her immunizations. Because Victoria was premature, she was to have her eyes checked, as there was some concern that she was "cock-eyed."

Cornelia stated that mother had visited Victoria, and because mother telephoned Cornelia from different phone numbers, Cornelia claimed not to have mother's telephone number. Cornelia assured the social worker that she did not allow mother to visit Cornelia when mother was under the influence and that Cornelia never left Victoria alone with mother.

The social worker noted that Cornelia had provided two different social security numbers on two different documents.

Cornelia denied using two different social security numbers. She stated she must have written the wrong one by mistake.

Cornelia admitted to having a history with DCFS. She claimed that she did not know that she was required to tell the probate court of her history with DCFS. Cornelia had six DCFS referrals dating back to June 2008:

On October 25, 2017, DCFS received an allegation that Cornelia rented a room to a lady who babysat for Daron. Cursing and sounds of hitting were heard. The referral was closed as inconclusive.

On November 7, 2016, DCFS received a referral of physical abuse by Cornelia to a child named Woody. The reporter claimed that Cornelia held a knife and hit her biological child Woody on the mouth with the handle. Cornelia admitted that Woody had behavioral and defiance issues at school, and the caller felt that Cornelia was using inappropriate discipline. Cornelia admitted to making the threat but stated that she did not resort to violence. The allegation was determined to be unfounded.

On May 30, 2014, DCFS received a referral alleging emotional abuse of Woody and Faith. The caller had been treating Cornelia, who had been diagnosed with a psychotic disorder. It was unknown whether Cornelia was complying with treatment. Cornelia had threatened to stab a male visitor with a knife. The allegations were deemed to be unfounded. Although Cornelia admitted to making the statements, she had no intention of following through. The children and an adult brother who lived in the home denied mother had ever attempted to hurt the male friend.

In November 2017, DCFS received an allegation of general neglect as to Daron. It was alleged that Cornelia brought Daron

to the home of his biological parents on a regular basis, and that the biological parents used “meth” and “sherm” in the presence of the child.⁴ The referral further alleged that the parents engaged in violent behavior in front of the child. The allegations were determined to be inconclusive due to a loss of contact with the biological parents.

In December 2009 there was a referral of sexual abuse of Cornelia’s child, Woodysha, by maternal uncle Jerry J. The referral was “evaluated out.”

In June 2008 a referral alleged general neglect by Cornelia of children Wanyea, Woodysha and Faith. The referral was closed as unfounded.

When asked about her mental health history, Cornelia admitted to talking to a therapist about a year earlier. She did not continue with mental health services. She had started therapy due to the loss of her parents. One psychiatrist had recommended that she take the medication Abilify. Cornelia began taking the medication, but stopped because she did not feel that she needed it any longer. Cornelia stated that her mental health services had been “on and off” but felt that her mental health was stable and she did not need medication or immediate services. On August 17, 2018, Cornelia had received a phone call from St. Paul mental health clinic about making an appointment with them, and stated that she would do so.

On August 20, 2018, the social worker spoke with Cornelia by phone and asked Cornelia to submit to an on-demand drug test. Cornelia raised her voice and began cursing, telling the

⁴ “Sherm” is a cigarette dipped in PCP.
(<https://www.internetslang.com/SHERM-meaning-definition.asp>.)

social worker she would “get hers.” Nevertheless, Cornelia did submit to a drug test on August 22, 2018, with negative results for drugs.

In September 2018, DCFS spoke with a neighbor who claimed not to know Cornelia or her family very well. Still the neighbor had seen a woman and two men whom she believed lived at Cornelia’s residence, as well as many children, including a newborn. The neighbor did not have any concerns for the safety of the children but stated that the residents of the apartment smoked marijuana, as there was a strong scent of marijuana when they opened the door.

In September 2018, the social worker visited the home again. Cornelia claimed not to have had contact with mother since the last visit and still did not know mother’s telephone number or address. Cornelia also disclosed that she was previously diagnosed with schizophrenia. When confronted about not providing this information during a previous visit, Cornelia said she told the social worker about her diagnosis during the last visit. Cornelia stated that she was not taking any psychotropic medication. She did not feel that she needed it. During this interview, Felicia, Cornelia’s sister, stated that she and Cornelia are both schizophrenic, and began to mimic a person with mental health problems. She looked at Victoria and said that she was going to get a beating. She said it several times, holding the child carefully and gently. Felicia then said that she was joking.

Four-year-old Daron was interviewed. He stated that he could not answer questions because Cornelia had told him not to, though he did admit that he lived in the home with Cornelia. When asked who else he lived with, he stated Faith, Victoria, and

his two brothers Wayne and Stephen. Daron denied physical abuse but when asked about drugs or alcohol he stated that he could not talk about that.

Faith, age 13, was also interviewed. Faith expressed fear that if Victoria was removed from the home, then she and Daron would also have to be removed. Faith stated that Cornelia had raised her since she was a kid and did her best to provide for the children in the home. Victoria's mother had come to the home four times. Once mother came to the home under the influence, and Cornelia asked her to leave. Mother left without incident. Faith reported that Cornelia has mood swings, and when she does, she does not want to go outside. These episodes last one day, and do not affect the family.

The social worker was able to locate mother at her last known address. Mother admitted she smoked crack cocaine during her pregnancy and that Victoria was born positive for cocaine. Mother acknowledged that she could not care for Victoria, which is why she created the plan for her friend Cornelia to care for Victoria. Mother was not aware of Cornelia's history with DCFS and stated that, had she known, she would not have placed Victoria with her. She agreed to attempt to find someone else to care for the child, but had no one in mind. Mother continued to refuse to provide the name of Victoria's father.

A teacher with Pediatric Care Services informed the social worker that she was providing early intervention services to Victoria twice a week in Cornelia's home. The teacher stated that each time she went to the home, there were always other people in the home helping Cornelia take care of Victoria. She

said often it was Cornelia's two adult sons. She did not know the names of Cornelia's sons or whether they resided in the home.

DCFS obtained a removal warrant. On October 3, 2018, the social worker arrived with Los Angeles Police Department officers, detained Victoria, and placed her in protective custody.

Juvenile dependency petition and detention hearing

On October 5, 2018, DCFS filed a petition on behalf of Victoria pursuant to Welfare & Institutions Code section 300.⁵ The petition alleged that mother had failed to protect Victoria pursuant to section 300, subdivision (b). In count b-1, the petition alleged that mother had a history of illicit drug abuse and is a current user of cocaine and marijuana which rendered the mother incapable of caring for Victoria. In count b-2, the petition alleged that Victoria was born suffering from a positive toxicology screen for cocaine. In count b-3, the petition alleged that mother made an inappropriate plan for the child's care and supervision by placing the child with Cornelia. Specifically, count b-3 alleged that:

“The child Victoria[s] . . . mother . . . made an inappropriate plan for the child's care and supervision by placing the child in the care of the unrelated adult/Temporary Guardian Cornelia J[.], since the child's birth. The unrelated/Temporary Guardian, has a long criminal history of drug related convictions and has untreated mental and emotional problems including schizophrenia. The unrelated adult/Temporary Guardian, has not been forthcoming with providing information regarding her correct social security number and information regarding the

⁵ All further statutory references are to the Welfare & Institutions Code.

unrelated adults residing in the home and unrelated adult/temporary guardians' criminal history. The unrelated adult/temporary guardian is medically ill. The mother's failure to make an appropriate plan for the child's care and supervision on part of the mother endangers the child's physical health, safety and well-being and places the child . . . at risk of serious physical harm, damage, danger and physical abuse."

On the same date, DCFS filed a report with the probate court concerning Cornelia's suitability as guardian for Victoria. Based on the report, Cornelia's temporary guardianship was terminated and the guardianship proceeding was dismissed.

Cornelia was present at the October 9, 2018 detention hearing. The juvenile court found that DCFS had made a prima facie case that Victoria was a child described by section 300. However, DCFS had failed to establish any present concerns about abuse or neglect of the child with her present caretaker. The juvenile court ordered that Victoria be released to mother on the condition that she continue to leave the child in the care of Cornelia and have no unmonitored contact with the child.

That same day, the DCFS social worker received a telephone call from someone who said she was mother, though she did not sound like mother. The woman said the juvenile court had released Victoria to mother and she wanted to pick up the child. The social worker confirmed that the court had released the child to mother with monitored visits.

Jurisdiction hearing

The jurisdiction hearing commenced on November 20, 2018. Cornelia was present and testified. She admitted to being diagnosed with schizophrenia about 10 years earlier. However, Cornelia stated that she did not take any medication at the

present time. When she was first diagnosed, she took Abilify for about a month, then stopped. Although it was recommended that she keep seeing a psychiatrist, she stopped because she felt she was okay. Cornelia recently started seeing a therapist because DCFS recommended that she do so. She had attended one session. She did not know her therapist's name. She stated that she would continue the appointments if she had to, but she did not feel they were necessary. She denied having any psychotic disorder. At the time Cornelia was diagnosed with schizophrenia, her mother had just passed away. She had auditory hallucinations of her mother speaking to her at night. She was prescribed medication at the time. Since she ceased taking the medication, she had not had any auditory hallucinations of any kind.

Cornelia also denied providing two different social security numbers to anyone.

With respect to the previous DCFS referrals, Cornelia denied that she had ever struck a child or that she had allowed any child to have unmonitored contact with a parent in violation of a court order. Cornelia had two adult children, and two children she had adopted through the juvenile court, Faith and Daron. Cornelia's sister Felicia helped her with child care. Cornelia had breast cancer and had received weekly chemotherapy, but the treatment had ended.

Felicia, who identified herself as Cornelia's sister, also testified. Felicia stated that she was joking when she had previously stated that she and Cornelia were both diagnosed with schizophrenia. She denied that she was speaking to the social worker, but said she was speaking to her sister in the presence of the social worker. Felicia later stated that she never said

anything about schizophrenia or being schizophrenic. She also denied telling Victoria that she was going to get a beating.

Counsel then presented argument. Victoria's counsel asked that the petition be dismissed. While she admitted that mother was not able to care for the child due to her significant drug problem, she argued that having Cornelia become the child's legal guardian was an appropriate plan because it eliminated the risk of harm from mother's drug abuse. Mother's attorney joined in Victoria's counsel's position and asked that the petition be dismissed.

DCFS argued that the plan for Cornelia to become Victoria's legal guardian was inappropriate. DCFS acknowledged that the allegation that Cornelia had a criminal history was not proven, however DCFS asked that the juvenile court sustain an amended count b-3, eliminating the references to criminal history. Cornelia had several DCFS referrals and mother had stated that if she had known this, she would not have chosen Cornelia as caregiver for her child. DCFS was also concerned about Cornelia's mental health and her lack of truthfulness about her prior diagnosis and about the various caregivers for the child.

Jurisdictional findings and disposition

After considering the documentary evidence, testimony and arguments, the juvenile court found that DCFS met its burden of proof as to counts b-1 and b-2 as alleged. However, the court found that DCFS had not met its burden as to count b-3. Specifically, Cornelia's purported criminal history turned out not to be true. As to Cornelia's mental health problems and lack of truthfulness, DCFS had not established a risk of harm to the child.

The court noted there was no dispute as to mother's ongoing substance abuse and inability to care for her child. While mother had attempted to arrange a probate guardianship for the child, it was not established at that point. The court noted its intention to continue the disposition hearing and order DCFS to provide a guardianship assessment pursuant to section 360, subdivision (a).⁶

DCFS objected, expressing its position that Victoria should be removed from Cornelia. Victoria's counsel submitted on the tentative. Noting that the juvenile court's tentative would mean that mother would not receive reunification services, mother's counsel informed the court that she needed time to discuss the matter with mother. The juvenile court continued the disposition

⁶ Section 360, subdivision (a) provides, in pertinent part: "Notwithstanding any other provision of law, if the court finds that the child is a person described by Section 300 and the parent has advised the court that the parent is not interested in family maintenance or family reunification services, it may, in addition to or in lieu of adjudicating the child a dependent child of the court, order a legal guardianship, appoint a legal guardian, and issue letters of guardianship, if the court determines that a guardianship is in the best interest of the child, provided the parent and the child agree to the guardianship, unless the child's age or physical, emotional, or mental condition prevents the child's meaningful response. The court shall advise the parent and the child that no reunification services will be provided as a result of the establishment of a guardianship. . . . [¶] . . . [¶] No person shall be appointed a legal guardian under this section until an assessment as specified in subdivision (g) of Section 361.5 is read and considered by the court and reflected in the minutes of the court."

hearing to December 12, 2018, and ordered DCFS to conduct and submit an assessment pursuant to section 360, subdivision (a).

Section 360, subdivision (a) assessment

In a report submitted for the December 12, 2018 hearing, DCFS provided additional information regarding Cornelia's ability to provide for Victoria's needs. Cornelia reported that she would be able to provide for Victoria's needs, financially and emotionally, however Cornelia was not employed and claimed income from her adopted children's funding. Cornelia stated that it would not be a problem if she did not receive funding from DCFS if Victoria was placed with her on a home-of-mother order. Cornelia expressed that she was committed to raising Victoria.

Though Cornelia had recently been diagnosed with breast cancer, she did not think her chemotherapy treatments would be an issue. She stated that Victoria would be taken care of by the Regional Center while she was at chemotherapy. While attempting to confirm this, the social worker was informed that the Regional Center did not currently provide daycare services.

DCFS obtained information from Cornelia's mental health provider. Specifically, it was reported that Cornelia was diagnosed with schizoaffective disorder, bipolar type, and had been prescribed Abilify, Lithium Carbonate, and Trazodone. Symptoms of schizoaffective disorder can include hallucinations or delusions as well as episodes of mania and depression. Cornelia continued to minimize her mental health diagnosis.

Although Cornelia had stated on several occasions that she lived alone with her adopted children, the third bedroom appeared occupied. A recent report indicated that Cornelia's son Woody P. and his son's mother, Christi, were living at Cornelia's home. DCFS detained Woody's and Christi's son on November

22, 2018, for general neglect. Christi reported that she lived at Cornelia's address, where Woody did not let her out of the bedroom and did not let her go out with friends. These statements implied that Woody was also living at Cornelia's home. Christi had a history of substance abuse and both Christi and Woody appeared to be under the influence when their son was in the hospital. Christi and Woody both admitted to recently smoking marijuana. Cornelia continued to deny that either Woody or Christi lived with her.

The dependency investigator was unable to locate mother to ask her if, given Cornelia's DCFS referral history and mental health history, she would have chosen someone else to be Victoria's caretaker.

On December 12, 2018, the juvenile court ordered the disposition hearing continued to January 9, 2019, so that DCFS could continue to attempt to obtain information from Cornelia's therapist and submit an updated report.

In a last minute information for the court filed on January 9, 2019, the dependency investigator reported that she spoke with Cornelia's therapist, Ms. Sun, on December 17, 2018. The therapist reported that Cornelia had been receiving mental health services for many years, but when her previous provider relocated, she stopped. Cornelia began receiving services again in September 2018. The current provider received the diagnosis of schizoaffective disorder and bipolar disorder from the previous provider. Cornelia was being assessed to determine whether the diagnosis was still appropriate.

The DCFS emergency social worker on Cornelia's son's case tried to speak with Cornelia, who was uncooperative. Cornelia said she did not know Christi, the mother of her grandchild, but

wanted the child placed with her. The social worker conducted a home assessment of Cornelia's home, and reported that the supposedly vacant bedroom looked messy and lived-in. After much interrogation, Cornelia stated that she used the room for her "other sons when they visit."

Disposition hearing

The disposition hearing was held on January 9, 2019. Ms. Sun testified that she was a psychiatric social worker who provided therapy for individuals. Cornelia had been her client since September 2018, and Ms. Sun had seen Cornelia bi-weekly for a total of six sessions. Ms. Sun was aware that Cornelia had been diagnosed with schizoaffective disorder by her previous therapist and it was her practice to carry on treating the previous diagnosis while making her own assessment. However, Ms. Sun felt that Cornelia's diagnosis was acceptable for now, because Cornelia reported symptoms of depressed mood and irritability. Cornelia had also reported auditory hallucinations, but Ms. Sun did not know how recently the hallucinations had occurred. Cornelia was not a very good historian regarding her mental illness, so it was taking Ms. Sun longer than usual to assess her.

Cornelia had been prescribed medication, but Ms. Sun did not closely monitor that because a psychiatrist was in charge of the medication. Ms. Sun did not know if Cornelia was compliant with her medication. Ms. Sun also did not have an opinion as to whether Cornelia needed to continue with therapy, because she was still assessing her. Ms. Sun had not discussed the children in detail with Cornelia. It was outside the scope of Ms. Sun's expertise to assess Cornelia's ability to care for a child.

Cornelia testified that she was presently seeing a therapist, but had only seen her twice. Prior to that she had been seeing a

therapist on and off. Cornelia stated that she was then taking Abilify and Lithium. Abilify is for when she is depressed, and Lithium is for when she is “hearing voices.” Cornelia denied telling her therapist that she had heard voices, was feeling irritable or was feeling depressed. Cornelia testified that she was aware that Christi was her son’s girlfriend, but denied that Christi and her son had lived with her. She was aware of the DCFS case involving her son and Christi, but denied asking that the child be placed with her and denied that the child had ever been in her home.

Victoria’s counsel admitted that DCFS had provided evidence of concerns, but that they were just that, simply concerns, with no proof of risk of abuse or neglect. Victoria’s counsel asked that the current orders remain in place. Mother’s attorney joined with Victoria’s attorney’s argument.

DCFS took the position that Victoria should be removed from mother and suitably placed, not with Cornelia. Cornelia’s mental health was of concern to DCFS. She had not been forthcoming with DCFS regarding her mental health issues, and her testimony conflicted with that of her mental health professional. DCFS had been unable to clearly assess the situation because Cornelia was not open to DCFS and provided conflicting information. In addition, Cornelia was not forthcoming about her living situation. Christi stated that she had been residing in Cornelia’s home, and had information about Victoria. However, Cornelia denied that she lived with anyone other than the children. There were allegations that Cornelia’s son and Christi had substance abuse issues, and their son was the subject of a separate dependency proceeding based on their

alleged substance abuse. If either Christi or Cornelia's son had been residing in Cornelia's home, Victoria was at risk.

The juvenile court ordered Victoria removed from mother's physical custody and suitably placed. The court noted that the evidence before it also raised significant concerns regarding the child's care in the home of Cornelia. There were concerns regarding Cornelia's mental health history and the occupants of her home. Lack of truthfulness was also troubling.

The juvenile court ordered that Victoria be placed in the care, custody and control of DCFS, with reunification services provided to mother. Cornelia and her sister were also granted monitored visitation with the child, and DCFS was granted discretion to liberalize such visitation.

DISCUSSION

Mother appeals from the jurisdictional and dispositional findings and orders. DCFS cross-appeals from the juvenile court's jurisdictional findings. We address the appeal and cross-appeal separately below.

I. Mother's appeal

A. Applicable law and standard of review

A child may be adjudged a dependent of the court under section 300, subdivision (b), if the "child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent . . . to adequately supervise or protect the child." (§ 300, subd. (b)(1).)

The "three elements" for jurisdiction under section 300, subdivision (b) are "(1) *neglectful conduct by the parent in one of the specified forms*; (2) causation; and (3) "serious physical harm or illness" to the minor, or a "substantial risk" of such harm or

illness.’ [Citation.]” (*In re R.T.* (2017) 3 Cal.5th 622, 628.) “‘The court need not wait until a child is seriously abused or injured to assume jurisdiction and take the steps necessary to protect the child.’ [Citation.]” (*In re I.J.* (2013) 56 Cal.4th 766, 773 (*I.J.*).) A finding of substance abuse is “prima facie evidence of the inability of a parent or guardian to provide regular care resulting in a substantial risk of physical harm.” (*In re Drake M.* (2012) 211 Cal.App.4th 754, 767 (*Drake M.*).)

A juvenile court’s jurisdictional findings are reviewed for substantial evidence. (*Drake M., supra*, 211 Cal.App.4th at p. 762.) Under this standard, we must view the evidence in the light most favorable to the juvenile court’s order, drawing every reasonable inference in support of the judgment. (*In re Marina S.* (2005) 132 Cal.App.4th 158, 165.) We do not reweigh evidence. (*Ibid.*) “When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court’s jurisdiction, a reviewing court can affirm the juvenile court’s finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence.’ [Citation.]” (*I.J., supra*, 56 Cal.4th at p. 773.)

A dispositional order removing a child from parental custody is also reviewed for substantial evidence. (*In re Hailey T.* (2012) 212 Cal.App.4th 139, 146.) On appeal of the juvenile court’s decision regarding placement of a child, the abuse of discretion standard is applied. (*In re Robert L.* (1993) 21 Cal.App.4th 1057, 1067.)

B. Substantial evidence supports the finding of jurisdiction

Mother does not dispute the allegations concerning her ongoing substance abuse nor her present inability to care for the child due to such substance abuse. She also does not dispute that Victoria tested positive for cocaine at birth, was born prematurely, and spent several weeks in the hospital before she could be released. The sole issue raised by mother is whether these circumstances present a current risk of harm. DCFS was required to show that Victoria “has suffered, or there is a substantial risk that [she] will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent . . . to adequately supervise or protect the child.” (§ 300, subd. (b)(1).) Mother argues that past events are not probative of current conditions if there is no “‘reason to believe that the conduct will continue.’ [Citation.]” (*In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1215-1216 (*Christopher R.*)). However, in arguing this, mother does not argue that her substance abuse has ceased. Instead, she argues that even if it continued, there was no evidence that it would in any way affect Victoria because mother made clear her intent that Victoria be raised by Cornelia.

Mother’s use of cocaine, marijuana and alcohol during her pregnancy “unquestionably endanger[ed] the health and safety of her unborn child.” (*Christopher R., supra*, 225 Cal.App.4th at p. 1217.) Mother has not made any effort to deny the allegations that her substance abuse is ongoing. The evidence fully supports the juvenile court’s finding that mother engages in substance abuse. Further, mother admits that she has shown little interest in visiting Victoria, and has not engaged in any of the reunification efforts offered to her by the county. This is “prima

facie evidence of the inability of [mother] to provide regular care resulting in a substantial risk of physical harm.” (*Drake M.*, *supra*, 211 Cal.App.4th at p. 767.) Thus, the juvenile court’s finding of substantial risk of harm was justified.⁷

Mother’s argument that she intended for someone else to raise her child does not undermine the juvenile court’s finding. In fact, mother’s decision to place her child in the care of a third party supports a determination that there was a current ongoing risk to the child in mother’s custody. Mother did not want to or intend to care for the child. Mother cites no authority for the proposition that her “intent that Victoria be raised by someone else” suggests that there is no risk to the child in mother’s custody.

Mother had full legal custody of Victoria. Mother praises Cornelia’s care of Victoria, suggesting that there was no present

⁷ Because mother’s substance abuse was ongoing throughout the proceedings, the cases cited by mother on this point are distinguishable. Mother argues that a parent’s past conduct does not necessarily predict future parental conduct, citing *In re B.T.* (2011) 193 Cal.App.4th 685, 693-694 [mother’s sex with willing teenage boy did not compel conclusion that her children were at risk of abuse or neglect]; *In re J.N.* (2010) 181 Cal.App.4th 1010, 1022-1024 [single accident in which a parent drove intoxicated did not create risk of future abuse in the absence of history of alcohol or child abuse]; *In re D.L.* (2018) 22 Cal.App.5th 1142, 1147 [no risk sufficient for jurisdiction present based on father’s storing a gun accessible to toddler where parents had separated, the child remained with mother and there were no guns in mother’s home].) Mother makes no argument that her drug abuse has ceased, therefore the child remained at risk in her custody.

risk to Victoria because mother had placed her with a competent caregiver. However, Cornelia did not have legal custody of Victoria -- mother did. Mother cites no precedent for her position that she may be considered a proper custodian of the child due to her desire to give away the child.⁸

By comparison, mother cites section 300, subdivision (g), which, she claims, allows an incarcerated parent to avoid dependency jurisdiction by arranging for the care of a child.⁹ Mother is not incarcerated, thus this provision does not apply. Mother fails to provide similar authority for a current substance abuser, who has full legal custody, to avoid dependency jurisdiction by arranging for care of a child. Regardless of the quality of Cornelia's care, removal of Victoria from mother's custody was appropriate and supported by substantial evidence.

C. Substantial evidence supports the disposition order removing Victoria from mother's care

Mother makes two arguments as to the disposition order removing Victoria from her care. First, she argues that when

⁸ Mother's argument that she attempted to grant Cornelia a legal guardianship is irrelevant. Cornelia was unable to obtain a legal guardianship. Mother was the sole legal custodian of Victoria at the time of these proceedings, and the juvenile court properly found that Victoria was at risk in mother's custody.

⁹ Specifically, section 300, subdivision (g) permits a juvenile court to take jurisdiction of a child if "the child's parent has been incarcerated or institutionalized and cannot arrange for the care of the child." The provision pertains generally to situations where a child is left by the parent without any provider of care and support. Incarceration is one of those possible situations.

jurisdiction findings are reversed, the disposition orders based on them must also be reversed. (Citing *In re James R.* (2009) 176 Cal.App.4th 129, 137 [abrogated on other grounds in *In re R.T.*, *supra*, 3 Cal.5th at p. 624].) Because we do not reverse any jurisdiction findings, this is not a ground for reversal in this matter.

Mother further argues that, even if the jurisdiction findings are sustained, reversal of the disposition order removing Victoria from mother's custody is required because mother provided a reasonable alternative. Mother cites section 361, subdivision (c)(1), which provides that a dependent child "shall not be taken from the physical custody of his or her parents, guardian or guardians, . . . with whom the child resides at the time the petition was initiated, unless the juvenile court finds by clear and convincing evidence [that] [¶] . . . there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's, [or] guardian's . . . physical custody." Mother argues that she had voluntarily consented that Cornelia become Victoria's guardian, that her choice of Cornelia was not inappropriate, and Victoria was not at risk in Cornelia's care. Thus, mother argues, the court should have ordered that Victoria remain in mother's custody on the condition that mother leave Victoria with Cornelia. Mother argues that such an order would have protected Victoria while respecting the mother's choice of caretaker.

There is no statutory authority for the disposition order mother requests. Dependency proceedings in the juvenile court are governed by the Welfare and Institutions Code. (*In re M.C.* (2011) 199 Cal.App.4th 784, 790.) Under the code, the juvenile court has various options after deciding that the child is at risk in

the physical custody of a parent. First, the juvenile court must determine whether there is a parent, with whom the child was not residing at the time of the petition, who desires to assume custody of the child. (§ 300, subd. (a).) Because that option was not available in this case, the court was required to “order the care, custody, control, and conduct of the child to be under the supervision of the social worker who may place the child” in one of many situations, including “[t]he approved home of a relative, or the home of a relative who has been assessed pursuant to Section 361.4”; “[t]he approved home of a nonrelative extended family member as defined in Section 362.7, or the home of a nonrelative extended family member who has been assessed pursuant to Section 361.4 and is pending approval . . .”; “[t]he approved home of a resource family”; “[a] foster home”; or various other approved agencies. (§ 361.2, subds. (e)(1)-(e)(9).)

In addition, once a child is removed from a parent’s custody, the juvenile court is required to provide reunification services to the child and the child’s mother and statutorily presumed father or guardians. (§ 361.5, subd. (a).)

There is no statutory authority permitting a juvenile court to allow the child to remain in the custody of a parent on the condition that the child not live with the parent. In the absence of such statutory authority, the order mother requests is not permissible.

Further, as DCFS points out, if the juvenile court were to consider Cornelia a nonrelative extended family member pursuant to section 361.2, subdivision (e)(3), Cornelia would be subject to a home assessment under section 361.4. The juvenile court had ordered such an assessment of Cornelia under section

360, subdivision (a).¹⁰ Based on the results of the assessment, Victoria was removed from Cornelia.¹¹

¹⁰ As noted above, under section 360, subdivision (a), the juvenile court may appoint a legal guardian for the child after an assessment is performed “as specified in subdivision (g) of Section 361.5.” Subdivision (g) of section 361.5 requires an assessment of the eligibility of the prospective guardian, including, if the proposed guardian is considered a relative of the minor, “all of the factors specified in subdivision (a) of Section 361.3 and in Section 361.4.” Section 361.4 requires an in-home inspection; criminal records check of all persons over the age of 18 living in the home; and a check of allegations or prior child abuse or neglect. These matters were considered during the evaluation of Cornelia as a potential guardian in this proceeding.

¹¹ DCFS points out that mother has no standing to challenge placement. “An appellant must show prejudicial error affecting his or her interest in order to prevail on appeal. [Citation.]” (*In re Vanessa Z.* (1994) 23 Cal.App.4th 258, 261.) In a dependency proceeding where custody has been removed from a parent, the parent’s interest is to reunify with his or her dependent child. (*Ibid.*) The case law cited by DCFS on this point suggests that a parent may not challenge a placement order unless the placement affects the parent’s interest in reunification with the child. (See, e.g., *In re K.C.* (2011) 52 Cal.4th 231 [father, whose parental rights had been terminated, had no standing to appeal order denying placement with grandparents]; *Cesar V. v. Superior Court* (2001) 91 Cal.App.4th 1023, 1035 [father who stipulated to termination of reunification services had no standing to appeal denial of placement with his mother].) We therefore agree that mother has no standing to challenge the juvenile court’s determination that Cornelia was not a suitable placement for Victoria. We decline to discuss the evidence supporting that decision. Because mother has standing to

A child may be removed from the physical custody of her parent when there is clear and convincing evidence of a substantial danger to the health, safety, protection, or physical or emotional well-being of the child in the parent's physical custody and there are no reasonable means to protect the child without removal. In this case, mother was legally entitled to physical custody of Victoria, and the evidence supported the dispositional order removing such custody from mother. The disposition order placing Victoria in the custody of DCFS, with orders that DCFS find suitable placement, was statutorily authorized and appropriate, as there were no other authorized alternatives.

II. DCFS's cross-appeal

DCFS cross-appeals, arguing that the juvenile court should have sustained an amended count b-3. DCFS's cross-appeal fails because there is no relief available to DCFS, making reversal futile.

The juvenile court took jurisdiction over Victoria, and the sustaining of an additional allegation will not change the outcome of this matter.

“When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court's jurisdiction, a reviewing court can affirm the juvenile court's finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence.’
[Citation.]”

challenge the jurisdictional and dispositional orders, our discussion is limited to these two issues.

(*I.J.*, *supra*, 56 Cal.4th at p. 773.)

Normally it is the parent on appeal alleging that a particular allegation was not supported by the evidence. Here, DCFS alleges that a stricken allegation was supported by the evidence. However, the same logic applies. Because the evidence supported the juvenile court's assertion of jurisdiction under counts b-1 and b-2, we need not consider whether the juvenile court should have asserted jurisdiction for the additional reasons set forth in count b-3. "We will not reverse for error unless it appears reasonably probable that, absent the error, the appellant would have obtained a more favorable result. [Citations.]" (*In re Jonathan B.* (1992) 5 Cal.App.4th 873, 876.) There is no relief available to DCFS in the event of reversal on the ground urged on appeal. Thus, we decline to discuss count b-3 in detail.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
CHAVEZ

We concur:

_____, Acting P. J.
ASHMANN-GERST

_____, J.
HOFFSTADT